

REMARKS

The Examiner is thanked for his courtesy in indicating the allowance of claims 20 and 21.

Claims 6, 7 and 18-19 were rejected under 35 U.S.C. §112, second paragraph, for failing to particularly point out and distinctly claim the subject matter that the applicant regards as the invention.

Reconsideration is requested.

Claim 18 has been amended to be in independent form and as such is free of the of the objection based on improper dependency. The claims are not directed to the treatment of diseased birds. The concept of administering particular materials to poultry to increase weight gain is a well known practice in the art of poultry production. The fact that some individuals in a flock of poultry may be ill does not mean that the claimed methods of increasing weight gain are methods of treating sick birds. For this reason, the claimed methods properly point out the invention. Claim 19 has been amended to delete the reference to "for feeding". This amendment avoids the basis for the rejection based on the absence of a recitation of food in the text of the claim. For these reason, it is requested that this ground of rejection be withdrawn.

Claims 6, 7 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Sredni.

Reconsideration is requested.

Claims 6 and 7 are directed to a method of increasing weight gain in poultry and amended claim 18 is directed to a method of increasing the growth rate of poultry. Nothing in the Sredni patent mentions or suggests that the administration of any of the tellurium compounds mentioned by Sredni will enhance the growth of poultry. The Examiner's position appears since animals mentioned by Sredni are afflicted with diseases, they would experience weight loss and it would be obvious that the use of the tellurium compounds mentioned by Sredni would cause the animals to gain weight. The theoretical aspects of the effects of disease on

the weight of an afflicted animal do not teach or specify that a particular compound when administered to poultry will have an effect on weight gain or increased growth rates, if the poultry are healthy or unhealthy. When a patent claims a method of treating "poultry", there is no reason to interpret the term as being directed to poultry that are afflicted with a disease. The plain meaning of the word poultry is that is directed to a class of animals commonly raised for food production and not to a subclass of unhealthy animals. The question of "fully grown" birds was raised by the Examiner and it is a term that those who are skilled in the art do not associate with weight gain in poultry as that term is used in the present claims.

Weight gain and growth promotion of poultry are not predictable phenomena in poultry. The data at page 15 of the specification shows that the invention provides a 5% increase in growth rate which is an unobvious result. For these reasons, it is requested that this ground of rejection be withdrawn.

Claims 6, 7 and 18 were rejected under 35 U.S.C. §103 as being unpatentable over Sredni or Albeck in view of Lowenthal.

Reconsideration is requested.

The primary references were applied as disclosing that the tellurium compounds were effective in promoting the production of lymphokines including gamma interferon and Lowenthal was applied as showing the use of gamma interferon for increasing weight gain in birds.

The Lowenthal patent is limited to a disclosure of the intraperitoneal injection of birds with gamma interferon in order to enhance growth in healthy birds. There is no disclosure of the use of any material that would lead to the use of a tellurium immunostimulant for growth promotion in poultry. The Examiner's comments regarding four categories of invention are not based on any disclosure in the prior art references. As noted above, the data at page 15 of the specification shows that a 5% weight gain can be obtained by the practice of the invention. The Examiner has urged that of four categories of "birds", the applicants have only shown unexpected results for one category. It is submitted that

there is no need to demonstrate unexpected results because no *prima facie* case of obviousness had been established. The test data on page 15 is persuasive that the use of the tellurium compounds provides a result that could not have been predicted by the teachings of the prior art. For these reasons, this ground of rejection is in error and should be withdrawn.

Claims 6, 7 and 18 were rejected under 35 U.S.C. §103 as being unpatentable over Sredni.

Reconsideration is requested.

The amended claims are not directed to the treatment of sick or underweight birds. For this reason, this ground of rejection is based on terms that are not found in the claims and should be withdrawn.

Claims 6, 7 and 18 were rejected under 35 U.S.C. §103 as being unpatentable over Sredni or Albeck in view of Lowenthal.

Reconsideration is requested.

While Sredni also discloses selenium and tellurium as promoting the production of lymphokines, there is no suggestion that these compounds should or could be used to increase the growth of poultry. Lowenthal has been noted as having observed that the intraperitoneal use of avian gamma interferon leads to weight gain in poultry. This use fails to suggest the use of the tellurium compounds described by Sredni or Albeck because the use of gamma-interferon does not make obvious the use of a tellurium compound. For these reasons, it is requested that this ground of rejection be withdrawn.

An early and favorable action is earnestly solicited.

Respectfully submitted,



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